IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 990 of 1998(C)

CC.267/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA
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APPELLANT/COMPLAINANT:

A.K.KOCHUKURU, AGED 42 YEARS, S/O.KURIAKKOSE, ANACHIRA HOUSE, KEERAMPARA P.O., KOTHAMANGALAM.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS/ACCUSED & STATE:

1.CHARLEY JOHN, AGED 56 YEARS, S/O.JOHN, MADATHUVILAKOM KARA, PATTOM P.O., THIRUVANANTHAPURAM.

2.STATE OF KERALA, REP. BY THE DIRECTOR OF PROSECUTION, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.M.BALAGOVINDAN FOR R2
SRI.M.R.SASITH
PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.990 OF 1998 ()

Dated this the 31st day of January, 2007

JUDGMENT

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act contending that cheque issued for Rs.3,50,000/- by the 1st respondent was dishonored for insufficiency of funds. The court below acquitted the accused mainly on the ground that notice issued with regard to dishonor of cheque was not served on the accused. The records would show that the notice was issued in the correct address. Intimation was given twice with one on 19.12.1995 and another on 20.12.1995. Despite that accused has been evading the notice. It is the complainant's case that accused was deliberately evading the service of notice and based on various decisions of this Court according to the appellant when the letter send to him in the correct address was returned unclaimed despite intimations from the post office it is equivalent to refusal. Therefore it can be treated as service of notice. But the burden is for the complainant to prove that

same intimation was given. It is the case of the complainant that petitioner wanted to examine the post man to prove the same. But that was not allowed. Considering the facts and circumstances of the case, I am of the opinion that an opportunity ought to have been given to the complainant to prove this case. Hence the impugned order of the trial court is set aside and the matter is remanded. Parties may appear before the trial court on 26.3.2007. Both parties are allowed to adduce further evidence. With the above observations this appeal is allowed by way of remand.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.990 OF 1998

JUDGMENT

31st January, 2007